UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,042	04/13/2001	Masanori Matsuura	OAC-011	5952

959	7590	03/26/2004

LAHIVE & COCKFIELD, LLP.
28 STATE STREET
BOSTON, MA 02109

EXAMINER
MCLEAN MAYO, KIMBERLY N

ART UNIT	PAPER NUMBER
2187	18

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>18 December 2003</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-29</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-29</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   The enclosed detailed action is in response to the Amendment submitted on December

18, 2003.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

3.   Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et

al. (USPN: 6,341,239) in view of Bapat (USPN: 5,862,326) and Frazier (USPN: 6,609,165).

Regarding claims, 1-3, 5, 7-9, 11, 13-15, 19-20 and 22, Hayashi discloses a rewriting device

(Figure 1, Reference 14) for rewriting data stored in a non-volatile memory (Figure 1, Reference

20) of a vehicle controller (Figure 1, Reference 2), wherein the rewriting device is capable of

communicating with the vehicle controller (C 3, L 43-46; C 4, L 33-44). However, Hayashi does

not disclose the rewriting device configured to determine that communication between the

rewriting device and the vehicle controller is offline when no response is received from the

vehicle controller within a first determination time; wherein when a deleting/writing operation of

data is being performed, the rewriting device is configured to prohibit the determination of

offline until a second determination time elapses, the second determination time being greater

than the first determination time, wherein if no response is received from the vehicle controller

within the second determination time, which is the time necessary to delete data stored in the

memory/write data in the memory, it is determined that communication is offline. Bapat teaches

the concept of determining that communication between two devices (client/server) is offline (C

1, L 40-42 - a condition which is preventing the server form responding) when no response is

received from the server device within a first predetermined time period (TIMEOUT request - C

1, L 34-42); an wherein when an operation is being performed (an operation performed by the

server which is delaying a reply to the client's request), the client is configured to prohibit

determining that the server device is offline (C 1, L 42-45 - the client is prohibited in

determining or identifying the server device is offline by retransmitting the request until an

acknowledge is received from the server) until a second determination time elapses (TIMEOUT

reply – C 1, L 50-56), wherein if no response is received from the vehicle controller within the

second determination time, which is the time necessary to perform an operation, it is determined

that communication is offline (C 1, L 50-56). This feature taught by Bapat provides an efficient

and reliable means of communicating between two devices by ensuring that the devices receive

the information in which it is designed to receive and by identifying when the devices have not

received the information in which it is to receive. Bapat's system does not explicitly state that

the second determination time is greater than the first determination time. Bapat teaches that

these times are functions of time estimates and thus these values may be set as estimated (C 1, L

45-49, L 56-58 - the TIMEOUT request and the TIMEOUT reply values are functions of time

estimates and thus the TIMEOUT reply value can be greater than the TIMEOUT request value

when the estimation of how long the server should take to perform the desired operation is longer

than the estimation of how long it should take to send an acknowledge back to the client).

However, Frazier explicitly discloses a first determination time (RA_TOV) and a second

determination time (LP_TOV) wherein the second determination time is greater than the first

determination time (C 48, L 29-62, particularly L 39-41, 46-57). This feature taught by Frazier

provides efficiency by waiting a sufficient duration to allow for multiple attempts to await a

response (C 48, L 46-49). Hayashi discloses communicating between two devices; however,

Hayashi does not provide any means for ensuring efficient and reliable data communication

between them. Hence, it would have been obvious to one of ordinary skill in the art to use the

combined teachings of Bapat and Frazier in the system taught by Hayashi for the desirable

purpose of efficiency and reliability.

Regarding claims 4, 10, 16-17, 21 and 23, the system taught by Hayashi, Bapat and Frazier

discloses acquiring an operation time prior to an operation and to set the second determination

time to the operation time (Bapat – C 1, L 56-58, the operation time is acquired from the time

estimation function); wherein when the operation is being performed, the determination of

offline is prohibited until the second determination time that is set according to the operation

time elapses (Bapat - C 1, L 42-45 - the client is prohibited in determining or identifying the

server device is offline by retransmitting the request until an acknowledge is received from the

server).

Regarding claims 6, 12, and 18, the system taught by Hayashi, Bapat and Frazier discloses an

operation time is calculated based on an estimate of how long it should take the device to

perform the desired operation (Bapat - C 1, L 56-58) and thus if the operation is a memory

operation it is evident that the estimated time required to perform the operation would be

consider the size of the data and the specification of the memory.

Response to Arguments

4.   Applicant's arguments with respect to the claims have been considered but are moot in

view of the new ground(s) of rejection.

Conclusion

5.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kimberly N. McLean-Mayo whose telephone number is 703-308-

9592. The examiner can normally be reached on M-F (9:00 - 6:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Donald Sparks can be reached on 703-308-1756. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly N. McLean-Mayo
Examiner
Art Unit 2187

KIMBERLY MCLEAN-MAYO
PRIMARY EXAMINER

KNM

March 18, 2004